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SUBJECT: GOAM REVISED PROPOSED TEXT FOR AN "ARTICLE 98" AGREEMENT

1. (U) Sensitive But Unclassified. Not for Internet Distribution.

2. (SBU) The GOAM presented us with a diplomatic note January 13 containing their new proposed text for an "Article 98" agreement. We have faxed the full text to the Department for consideration.

3. (SBU) Begin text of the GOAM proposal:

Agreement Between the United States of America and the Republic of Armenia Regarding the Surrender of Persons of the United States of America to the International Criminal Court

The United States of America and the Republic of Armenia, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes;

Recalling the Rome Statute of the International Criminal Court, done at Rome on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the "Rome Statute") is intended to complement and not supplant national criminal jurisdiction;

Considering that the Parties have each expressed their intention to evaluate or investigate available information regarding the facts and where appropriate prosecute acts within the jurisdiction of the International Criminal Court alleged to have been committed by their officials, employees, military personnel or other nationals;

Bearing in mind the Article 2 of the Agreement between the Government of the United States of America and Government of the Republic of Armenia regarding cooperation to facilitate the provision of humanitarian and technical economic assistance of December 15, 1992, and Article 8 of the Agreement between the Government of the United States of America and the Government of the Republic of Armenia concerning cooperation in the area of counterproliferation of weapons of mass destruction of July 24, 2000, as well as other agreements (Agreements) currently in force between the Parties that establish privileges, and the norms of international law applicable in this matter;

Bearing in mind as well Article 98 of the Rome Statute;

Noting that in conformity with the Agreements the persons covered thereunder, including military and civilian personnel, are accorded status equivalent to that accorded to administrative and technical personnel under Vienna Convention on Diplomatic relations of April 18, 1961 and enjoy immunity from Armenian criminal jurisdiction, as a result of which their surrender, by any means, to the International Criminal Court, requires the express consent of the United States of America;

Noting that under international law, persons of the United States of America who enjoy immunity from Armenian criminal jurisdiction, including functional immunity, are not subject, within the terms of that immunity, to Armenia jurisdiction, as a result of which their surrender, by any means, to the International Criminal Court, requires the express consent of the United States of America;

Noting that the term "Sending State" has been used in treaties such as the Vienna Convention on Consular Relations of 1963 and in international law to distinguish among states referenced;

Noting that the provisions of Section 2007 (c) of the American Servicemembers' Protection Act, which states, "The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with the United States pursuant to Article 98

of the Rome Statute preventing the International Criminal Court from proceeding against the United States personnel present in such country";

Have herein agreed as follows, with the purpose both to restate existing obligations in this matter and to reach agreement contemplated in Article 98 (2) of the Rome Statute:

Article 1.

For purposes of this Agreement, the term "person of the United States of America" means the nationals of the United States, any current or former United States government official, employee (including any contractor), or member of the military, or any United States person who enjoys immunity from criminal jurisdiction under international law or who is subject in any manner to the jurisdiction under international law or who is subject in any manner to the jurisdiction of the Sending State (the United States of America).

Article 2.

A person of the United States of America, the Sending State, shall not, absent the express consent of the United States of America:

- a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or
- b) be surrendered or transferred by any means to any entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

Article 3.

When the Republic of Armenia extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Republic of Armenia will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the United States of America.

Article 4.

This agreement shall enter into force upon the exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force.

It will remain in force until one year after the date on which either Party notifies the other of its intent to terminate this Agreement.

The provisions of this Agreement shall continue to apply with respect to any act occurring or any allegation, arising, before the effective date of termination.

Done in duplicate in the English and Armenian languages at this day of 2004, both texts being equally authentic.

For the United States of America
For the Republic of Armenia

End text.
WALKER